

THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

DOCKET NO. 2006-107-W/S

IN RE:

Application of United Utility Companies,
Inc. for adjustment of rates and charges
and modifications to certain terms
and conditions for the provision of
water and sewer service.

**RESPONSE TO APPLICANT'S
MOTION FOR ORDER PROHIBITING
INTRODUCTION OR ADMISSION OF
TESTIMONY AND MOTION TO
STRIKE TESTIMONY**

Intervenor, North Greenville University ("NGU") hereby submits this Response to Applicant's Motion for Order Prohibiting Introduction or Admission of Testimony and Motion to Strike Testimony.

Applicant contends that NGU failed to timely file and serve the direct testimony of Dr. James Epting, Elaine King and Larry Barnwell. However, pursuant to 26 S.C. Code Ann. Regs. 103-869.C, NGU electronically filed each witness's direct testimony on July 31, 2003. Accordingly, the testimony was timely filed in accordance with the Commission's directive that such testimony be filed by this date. With regard to service of the testimony, the Commission's Rules of Practice and Procedure are silent as to the computation of time when service is made by mail. Accordingly, the Commission may look to the South Carolina Rules of Civil Procedure. Pursuant to Rule 6(e), five days are added onto the time in which a party has to serve something when service is made by mail. Thus, Intervenor had until August 5, 2006 in which to serve the Applicant. Since actual service was made on August 2, 2006, the testimony was both timely filed and served, and Applicant's Motion should be denied.

Moreover, Applicant has failed to show any prejudice whatsoever in receiving the testimony on August 2, 2006. In fact, the testimony was postmarked August 1, 2006, which

means the Applicant is complaining over a delay of, at most, one day before it was able to review Intervenor's pre-filed testimony. Applicant cannot seriously contend that such a slight delay somehow makes it less able to adequately review the pre-filed testimony or in any other way causes it to suffer prejudice. Applicant urges the Commission to sanction Intervenor as provided in Rule 37 of the South Carolina Rules of Civil Procedure. However, under Rule 37, an order denying a party the right to submit testimony "may be made only if there is some showing of wilful [sic] disobedience or gross indifference to the rights of the adverse party." Orlando v. Boyd, 320 S.C. 509, 466 S.E.2d 353 (1996). Applicant has neither alleged nor shown that Intervenor's one day delay was willful or grossly indifferent. Accordingly, Applicant's Motion should be denied.

Finally, Applicant contends that certain portions of the Direct Testimony of Dr. James Epting should be stricken for the reasons set forth in Applicant's Motion to Dismiss the Petition to Intervene. The Commission recently denied Applicant's Motion to Dismiss the Petition to Intervene and provided that NGU had a right to intervene and oppose the current rate adjustment proposed by Applicant, but that it could not re-litigate previously decided matters or contest prior findings by the Commission. The testimony sought to be stricken by Applicant does not attempt to re-litigate previously decided matters, nor does it contest prior findings by the Commission. Rather, such testimony is offered only as background information in order to familiarize the Commission and the other parties involved with the history of Intervenor's relationship with Applicant, as well as to put Intervenor's current position with regard to the proposed rate increase in the proper context. As Intervenor has already stipulated that it does not intent to use its intervention in the current docket to challenge the Commission's prior Order No. 2004-253.,

the challenged testimony does not attempt to re-litigate or challenge any prior orders.
Accordingly, Applicant's Motion should be denied.

Respectfully submitted,

s/ Duke K. McCall, Jr.

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CERTIFICATE OF MAILING

IT IS HEREBY CERTIFIED that a copy of North Greenville University's **Response to Applicant's Motion for Order Prohibiting Introduction or Admission of Testimony and Motion to Strike Testimony** was served upon all interested parties by placing a copy of the same in the United States Mail, postage prepaid, on the 8th day of **August, 2006**, addressed as follows:

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